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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/535,084   | 06/08/2006  | Claus Harder         | 117163.00137        | 8537             |
| 21324 7590 12/02/2008<br>HAHN LOESER & PARKS, LLP<br>One GOJO Plaza<br>Suite 300<br>AKRON, OH 44311-1076 |             |                      |                     |                  |
| EXAMINER   |             |                      |                     |                  |
| FRAZIER, BARBARA S   |             |                      |                     |                  |
| ART UNIT   |             | PAPER NUMBER         |                     |                  |
| 1611   |             |                      |                     |                  |
| NOTIFICATION DATE  |             | DELIVERY MODE        |                     |                  |
| 12/02/2008   |             | ELECTRONIC           |                     |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@hahnlaw.com  
akron-docket@hotmail.com

**Advisory Action  
Before the Filing of an Appeal Brief**

|                                      |                                      |
|--------------------------------------|--------------------------------------|
| <b>Application No.</b><br>10/535,084 | <b>Applicant(s)</b><br>HARDER ET AL. |
| <b>Examiner</b><br>BARBARA FRAZIER   | <b>Art Unit</b><br>1611              |

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 10 November 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 4.7.9 and 12-15  
Claim(s) withdrawn from consideration: 1-3,8,10,11 and 16-23.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
12. ☐ Note the attached *Information Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Sharmila Gollamudi Landau/  
Supervisory Patent Examiner, Art Unit 1611

/B. F./  
Examiner, Art Unit 1611

Continuation of 3. NOTE: Applicant's amendment to claim 14 removing the word "about" at each occurrence changes the scope of the claim such that it requires further consideration and/or search.

Continuation of 11. does NOT place the application in condition for allowance because: Even though Applicants argue that a structural limitation is imparted by the intended use clauses of the claims, they also state that such behavior is caused by an at least substantially biodegradable carrier present. The Stroganov reference discloses the same biodegradable carrier (e.g., see Example 3) as that disclosed in the claimed invention (e.g., claim 7) and therefore would be capable of performing the intended use recited in the claims. Furthermore, the teaching in Stroganov of stimulating bone growth does not exclude its compositions from being used for the inhibition of proliferation of smooth muscle cells. Additionally, claims 4, 7, 9, and 12-15 remain provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over copending Application Nos. 10/706,717, 10/596,797, 10/908,729, 11/221,322 and 11/221,344, for reasons recited in the previous Office action.